



FREDERICK COUNTY PLANNING COMMISSION

October 11, 2017

TITLE: Westview South MXD – Residential Section Revision
Phase 1.3C

FILE NUMBER: S-905/SP-98-36 (AP 17503, APFO 17504, FRO 17505)

REQUEST: Combined Preliminary Subdivision Plan/Site Plan
The Applicant is requesting Combined Preliminary/Site Development Plan approval to revise the 4.93 +/- acre Phase 1.3C portion of the overall approved Westview South MXD Residential project to: remove 128 MF units (4, 32-unit buildings) and replace those units with 24 townhomes and 46 '2 over 2' units) and revise the open space layout. The revision will result in a total of 542 dwelling units comprised of 242 multi-family units (three 32-unit MF buildings and 146 2 over 2 units), 184 townhomes, and 116 single family detached dwellings.

PROJECT INFORMATION:

ADDRESS or LOCATION:	Northeast quadrant of New Design Road and Executive Way
TAX MAP/PARCEL:	Tax Map 86, Parcels 269 & 3
COMP. PLAN:	Office/Research Industrial (ORI)
ZONING:	Mixed Use Development (MXD)
PLANNING REGION:	Frederick
WATER/SEWER:	W-3, S-3

APPLICANT/REPRESENTATIVES:

APPLICANT:	MB Westview South, LLC
OWNER:	WVS Parcel 400, LLC/Matan Properties, LLC
ENGINEER:	Harris Smariga Associates, Inc.

STAFF: Tim Goodfellow, Principal Planner

RECOMMENDATION: Conditional Approval

ATTACHMENTS:

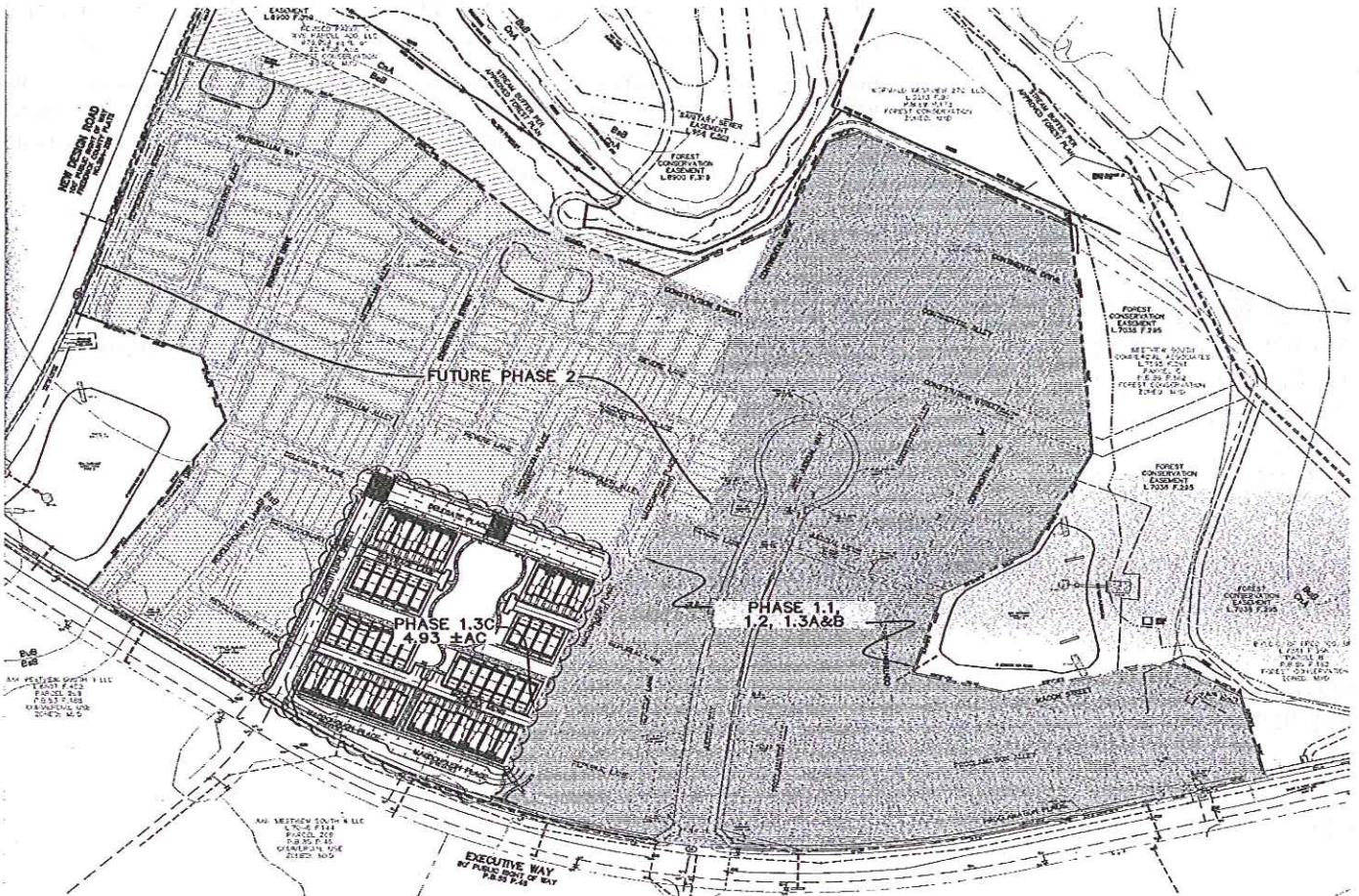
EXHIBIT 1 - Plan Rendering (Overall Westview South Residential Plan w/ proposed Phase 1.3C highlighted)
EXHIBIT 2 - Plan Rendering (Westview South Residential Plan w/ proposed Phase 1.3C enlarged)
EXHIBIT 3 - Plan Rendering (Westview South Residential Plan w/ current approved Phase 1.3 area)
EXHIBIT 4 - Developers Rights and Responsibilities Agreement
EXHIBIT 5 - 2nd Amended and Restated LOU

STAFF REPORT

ISSUE

Development Request

This application proposes a revision to a portion of the previously approved Westview South Combined Preliminary/Site Plans (AP#15579). The proposed revision would impact a portion of the project currently described as Phase "1.3C" in the graphic and table below. The remaining portions of the project, labeled Phase 1.1, 1.2, 1.3A, 1.3B and Phase II in the accompanying graphic, are not proposed for change at this time and are not a part of this review. Phases 1.1, 1.2, 1.3A and 1.3B are currently under construction. The proposed change in the total number and type of dwellings in the Westview South residential project is shown in the table below.



Westview South- Residential Section				
Number of Dwellings				
	Currently Approved Plan	Units within Proposed Phase 1.3C	Change in Units from Currently Approved Plan with Proposed Phase 1.3C Revisions	New Overall Total (includes all Phases)
Single-family Detached	116	0	No change	116
Townhome	160	24	+ 24	184
"2 over 2" condominium	100	46	+ 46	146
Multi-family	224	0	-128	96
TOTAL	600	70	58	542

This application proposes to replace the 128 Multi-family dwelling units (four 32-unit buildings) approved in the 2016 Westview South combined Preliminary/Site Plan with 24 townhome lots and 46 '2 over 2' units, within a 4.93-acre portion of the project (now referenced as Phase 1.3C). The changes proposed in Phase 1.3C reduce the Multi-family units in the entire project from 224 to 96, a reduction of 128 units. The Westview South Residential project's total dwelling unit count is reduced by 58 units with the revisions proposed in Phase 1.3C. All units now proposed in Phase 1.3C are rear-loaded with vehicular access provided by alleys. Townhomes in Phase 1.3C are designed with 2-car garages and 2-over-two units have 1-car garages.

Replacing the Multi-family units with townhomes and 2 over 2 units has resulted in a redesign of the previously approved 27,000 square-foot community green in the 2016 Westview South Preliminary/Site Plan. The current proposed Phase 1.3C community green/open space is an approximately 41,000 square-foot community area that is larger, more attractive and accessible for residents in the community. Benches, sidewalks, shade trees, and pole-lights are amenities included in the community green within Phase 1.3C. The 24 townhome units front on linear open space, which is part of the redesigned community green in this section.

The Project is subject to the requirements of the Phase I rezoning, the Frederick County Code, specifically Chapter 1-16 (Subdivision Rules and Regulations) for the Preliminary Subdivision Plan review, Section 1-

19-10.500 Planned Development Districts – MXD provisions, and Sections 1-19-3.300 through 1-19-3.300.4 for the Site Development Plan review. The Site Plan portion of the Project is being reviewed as “Townhouse” and “Multifamily dwellings” (for the 2 over 2 condominium units) under the use heading of *Residential* per §1-19-5.310 Use Table in the Zoning Ordinance.

BACKGROUND

Development History

The Westview South Residential project is a portion of the overall Westview South MXD. The overall Westview South project was the subject of several previous rezonings. The Site was zoned Agricultural (A) from 1959 to 1986, at which time it was rezoned to Office/Research/Industrial (ORI). The Site is currently zoned MXD, which was applied in 1994. In 2001, a portion of the overall MXD was amended for the removal of a residential land use component from the approved land use mixture.

The overall Westview South MXD began construction after the 2001 rezoning and several portions of the Project have been completed. The completed portions include a commercial area to the east along MD 85, portions of an employment area to the west along New Design Road, and major road connections. In addition, the Site includes portions of the Ballenger Creek Trail. The project is subject to a Development Rights and Responsibilities Agreement dated June 13, 2013.

In 2013, another rezoning was approved that resulted in the reintroduction of a residential land use component, not to exceed 615 dwellings. A condition of the 2013 rezoning required public dedication of a 22.49 +/- acre public use site for park purposes prior to recordation of the Project's first residential lot. This public use site is planned to provide a portion of the Ballenger Creek Trail. This site was conveyed to the County on February 17, 2015 per the deed recorded in the Frederick County land records in Book 10423 on page 0083.

The current Preliminary/Site Plan (AP#15579) for Westview South was approved on January 16, 2016, which addressed an area described as 'Part 2' of the project, consisting of 421 residential units. The overall number of units in Westview South was established at 600 as part of the 2016 Preliminary/Site Plan approval.

A separate site development plan for a community center, pool, and park space was approved by the Planning Commission on June 10, 2015 (AP#15160).

Existing Site Characteristics

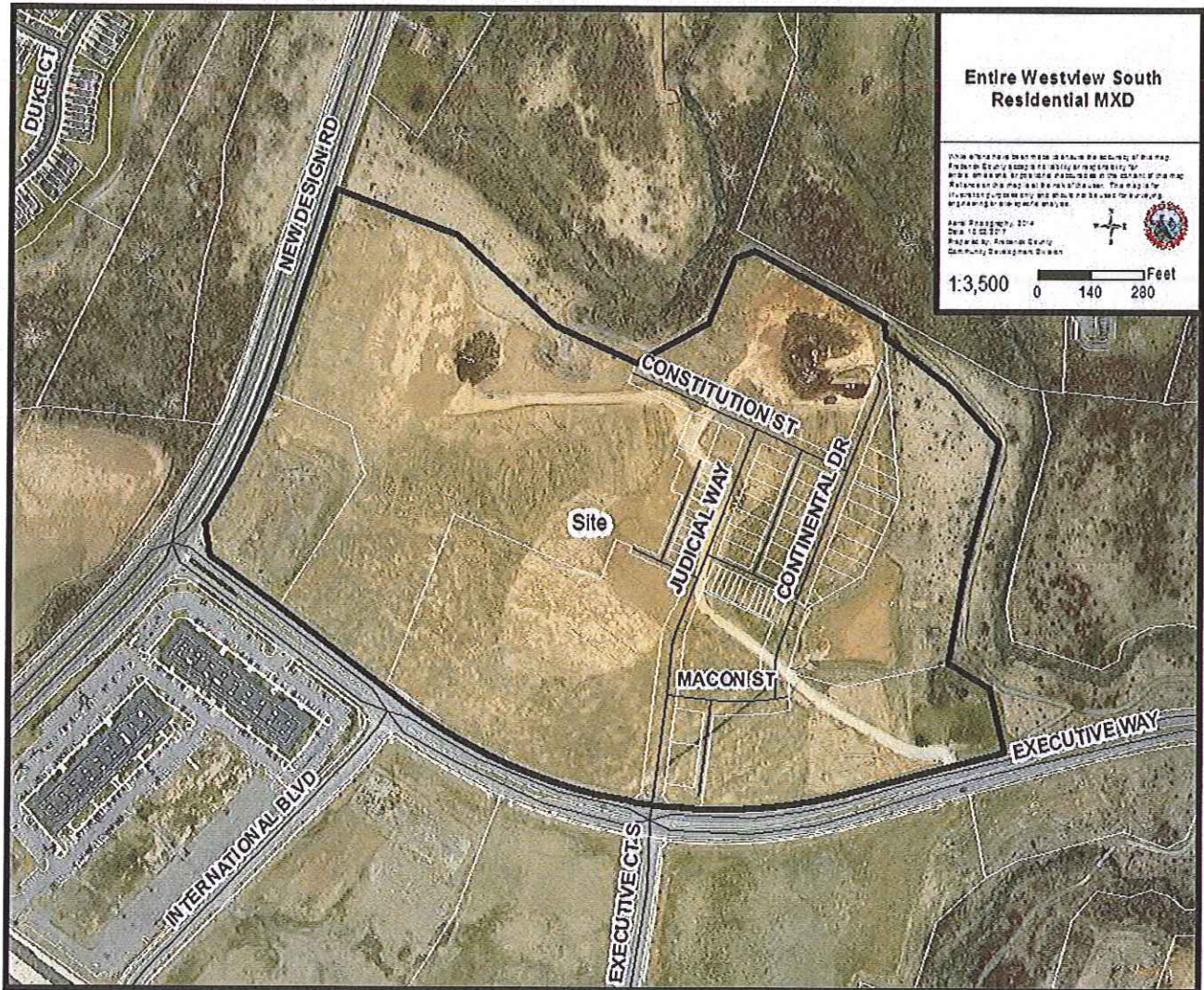
The project site is surrounded by MXD zoning to the north, south, east and west. The properties to the south are designated for employment uses with properties to the east beyond Ballenger Creek developed with a mixture of commercial uses. The project is bound on the west side by New Design road.

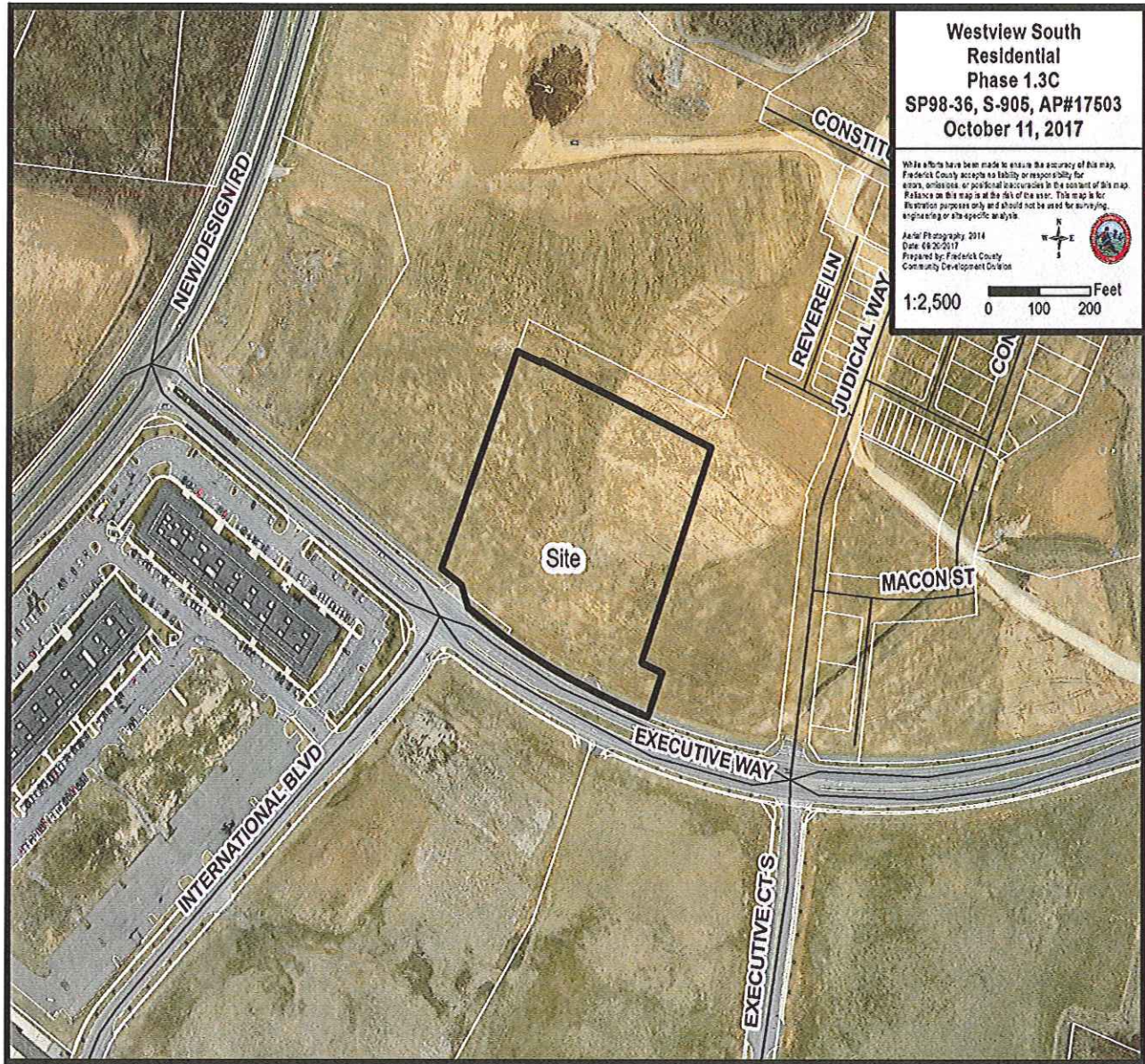
Ballenger Creek crosses the northern portion of the Westview South Residential project area, flowing from northwest to southeast into the Monocacy River to the east. Areas of the Site along Ballenger Creek are within the Federal Emergency Management Agency (FEMA) 100 year floodplain. However, the floodplain is located within the area of the project that was dedicated to the County for park purposes, and therefore

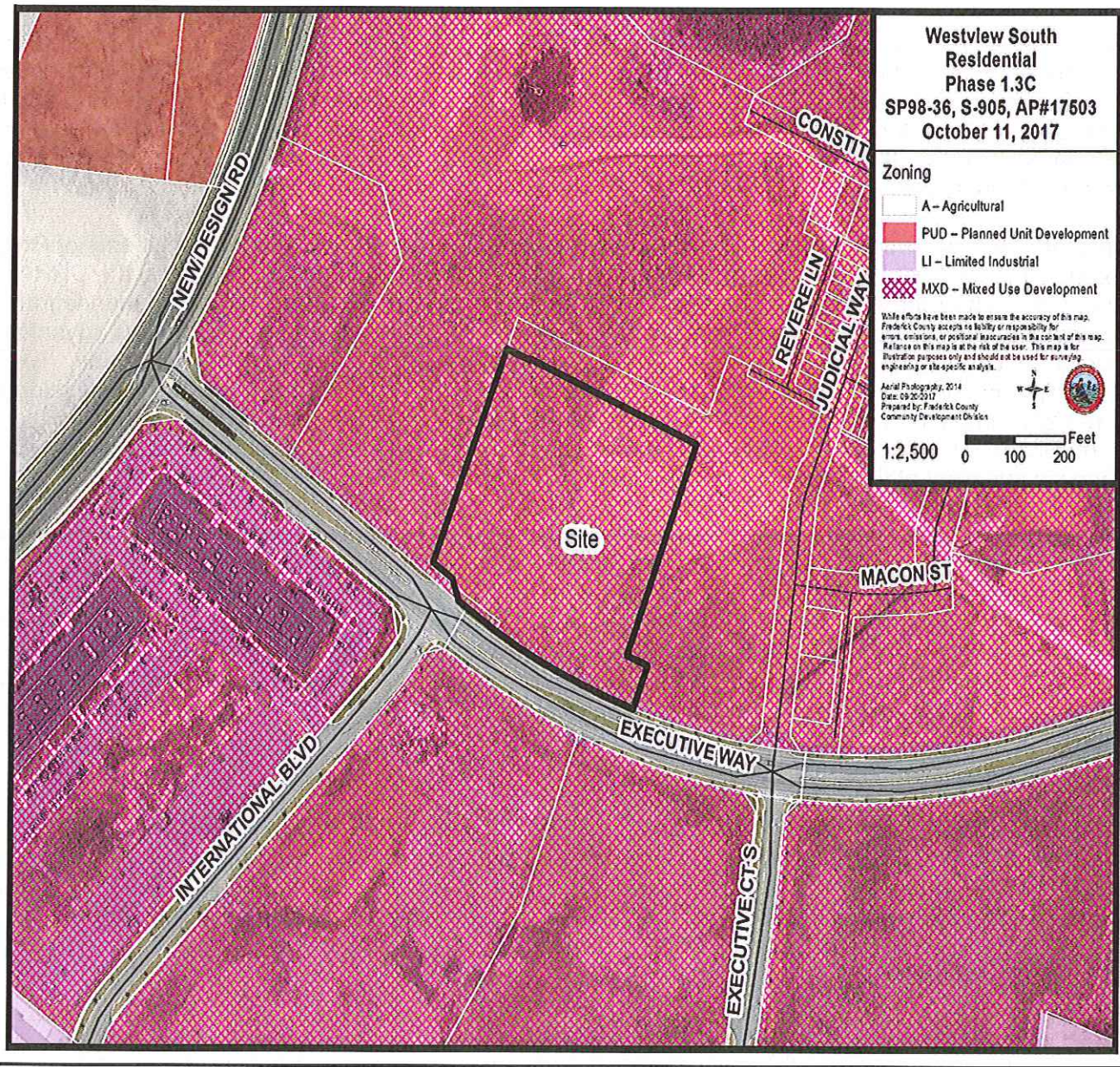
no residential development is proposed within the floodplain. There are no steep slopes within the residential portion of the Project.

The Site has frontage and access along New Design Road and Executive Way. The Site is served by Tuscarora Elementary School, Crestwood Middle School, and Tuscarora High School.

The following graphic outlines the entire Westview South Residential MXD project area, followed by a graphic of Phase 1.3C on pages 6 and 7.







ANALYSIS

Summary of Development Standards Findings and Conclusions

The changes proposed in this application are limited to a revised mix of dwellings, and several changes to the site's design and physical layout resulting from the new units' parking and access needs. Lighting, landscaping, bulk restrictions, lot size requirements, pedestrian and vehicular circulation, and the broad development strategy for the Site are equivalent to that which has been reviewed and approved in the current Preliminary/Site Plan.

As indicated below, and as has been previously approved, the Project meets the requirements of Chapter 1-16 and Chapter 1-19 of the Frederick County Code, the Phase I rezoning conditions and the DRRA. The land use pattern of the comprehensive plan and the district regulations of the zoning ordinance form the basic theme of the design pattern of the proposed subdivision. The subdivision design takes advantage of the uniqueness of the Site reflected by the surrounding natural, built, and planned landscape. Existing and anticipated surrounding land uses have been adequately considered in the design of the development and negative impacts have been minimized. Water and sewer service is or will be provided to the Site and the Site has the appropriate water and sewer classification. Access to the Site is adequate and sight distance is sufficient at the proposed access points.

Setbacks and building heights exactly match those approved in the 2016 Westview South Preliminary/Site Plan. The Adequate Public Facilities Ordinance Letter of Understanding (APFO LOU) outlining required public facility improvements was executed in September of 2005 with an amendment in June of 2013 in conjunction with the Westview South MXD rezoning (Case # R-00-02A). A second amendment was executed in May/June of 2014, which was required due to changes in the Project's residential use mix and the resulting increasing in pupil yield. The current application does not exceed the thresholds established by the previous LOU, and therefore does not require an amended LOU.

Detailed Analysis of Findings and Conclusions

COMBINED ANALYSIS OF SUBDIVISION AND SITE DEVELOPMENT PLAN REVIEW

Preliminary Subdivision Plan approval is determined based upon the requirements found in Chapter 1-16 of the Frederick County Code. Site Development Plan approval shall be granted if the criteria found in §1-19-3.300.4 Site Plan Review Approval Criteria of the Frederick County Zoning Ordinance are met.

SITE DEVELOPMENT

- **Land Requirements §1-16-217(A) & (B)**

The land use pattern of the comprehensive development plan and the district regulations of the zoning ordinance shall form the basic theme of the design pattern of the proposed subdivision.

The Site is designated Office/Research Industrial on the County Comprehensive Plan with Mixed Use Development zoning. The Mixed Use Development zoning signifies the advocacy of a mixture of employment, residential, commercial, and/or civic uses for land that is within Community Growth Areas. The Project is within the Ballenger Creek Community Growth Area, and is part of the overall Westview South MXD, which includes a combination of commercial, employment, and residential uses.

The PUD and MXD zoning districts require development that results in an integrated mixture of commercial, employment, residential, recreational, civic and/or cultural land uses. Projects in this

district should employ planning and design that is broad and integrative, and should result in efficient use of land, innovative design involving flexibility not permitted within the Euclidean zoning districts, and promote building and site design that reduces dependence on vehicular movement.

As was approved in the 2016 Plan, this revision proposes an interconnected system of streets with on-street parking, sidewalks, and a well-designed and prominently-situated community open space. While the revisions proposed in Phase 1.3C include townhomes and two-over-two units, the overall project contains a wide variety of housing types such as single-family houses, multi-family dwellings, townhouses, and two-over-two units.

The current proposal carries forward the planned interconnected street network previously approved. The interconnected street system promotes transportation efficiency by creating a flexible web of possible travel routes, and potentially distributing transportation load across the network. The design of the proposed revisions in Phase 1.3C includes an enhanced pedestrian network that provides connectivity between the different areas of the overall development. As such, the proposed design supports the intended land use pattern of the comprehensive development plan and the district regulations of the zoning ordinance.

The subdivision design shall take advantage of the uniqueness of the site reflected by the topography, soils, the wooded areas, water bodies and the relationship to adjoining subdivisions and land uses, both proposed and existing.

The overall Westview South Residential project integrates Ballenger Creek and an associated planned County trail network into the design. The Site is relatively flat and does not contain flooding or wet soils, wooded areas, or wetlands. Surrounding retail uses provide support services. The proposed changes to Phase 1.3C maintain these elements.

- **Block Shape §1-16-218**

The maximum block dimension shall be 1,800 feet.

No block dimension is greater than 1,000 feet. The removal of the multi-family units, the addition of different housing styles, and the location and enhancement of open space create variety in the arrangement and size of blocks in the proposed development of Phase 1.3C. Pedestrian circulation is supported by neighborhood design and placement of sidewalks and paths.

- **Lot Size and Shape §1-16-219**

The size, width, depth, shape, orientation and yards of lots shall not be less than specified in the zoning ordinance for the district within which the lots are located and shall be appropriate for the type of development, the use contemplated, and future utilities.

Setbacks and height within the Planned Development Districts (PUD & MXD) shall be established by the Planning Commission at Phase II as provided in §1-19-10.500.7(F)(2) of the Zoning Ordinance.

The project setbacks and building heights are not proposed for modification as part of the current plan and will adhere to the previously approved dimensions, shown below:

	Single Family Attached (townhouses)	Multifamily (two-over-two)
Front Yard:	0'	0'
Rear Yard:	3'	3'
Rear Yard Accessory	3'	3'
Side Yard:	5'	0'
Side Yard Accessory:	0'	0'
Height:	50'	65'

The Phase 1.3C revisions have been reviewed by the Division of Utilities and Solid Waste Management and other agencies with the above proposed setbacks, and have received conditional approval. The proposed setbacks correspond to typical dimensions in urban settings, and are appropriate for this Project in that it is designed with an urban density range and style of layout. The requested setbacks are also intended to provide flexibility to the Applicant for building placement on residential lots.

- **Site Development §1-19-3.300.4 (A)**

Existing and anticipated surrounding land uses have been adequately considered in the design of the development and negative impacts have been minimized through such means as building placement or scale, landscaping, or screening, and an evaluation of lighting. Anticipated surrounding uses shall be determined based upon existing zoning and land use designations.

The Project is located in close proximity to schools, commercial uses, and employment. The Ballenger Creek Trail will provide a recreational amenity for future residents, and the Ballenger Creek Park is near the Site. The layout of the buildings in the Project has been designed to provide appropriate frontage to the surrounding features. The building frontages of the two-over-two units are oriented toward the existing surrounding streets, and the townhomes toward the community open space.

Section 1-19-6.400 of the Zoning Ordinance requires landscaping, screening and buffering on a development site as part of the site plan review process. In 2016, the Planning Commission approved a landscaping modification to the Westview South Preliminary/Site Plan to allow planting of street trees within a planting strip of reduced width and a spacing that is intermittently greater than the required 35-ft. spacing.

The Project generally meets the code requirements by providing landscaping within the open space. Street trees are provided, however additional landscaping is needed on the entire west side of Macdonough Place. Staff is recommending the placement of shrubbery in this location, instead of deciduous trees, due to the location of a storm drain and a public water line in this area.

A photometric plan has been provided that indicates no lighting levels in excess of 0.5 foot candles at the property boundary. Proposed light fixtures meet the height requirement of 14' for pedestrian oriented lighting as measured from the ground surface to the midpoint of the source of illumination. The proposed fixture must be shielded to direct lighting downward and limit illumination of the

nighttime sky. The Zoning Ordinance requires that lighting be designed and installed to be fully shielded, and directed downward. Note 7 on the Cover Sheet also indicates that architecturally mounted wall lights will be provided. This note must be revised if the Applicant does not install building mounted lights. Sheet 5 of the plan set must be amended to indicate full shielding and downward direction of the pole lights.

TRANSPORTATION AND PARKING

- **Street, Common Driveway and Sidewalk Construction §1-16-109**

The project shall provide for the complete construction of street improvements, including drainage facilities as provided in §1-16-234 through §1-16-241 of the Subdivision Regulations and in accordance with the Frederick County Design Manual.

There is no change to the general specifications and strategy for the provision of sidewalks in Phase 1.3C of the plan relative to the previous approval, with the exception of a 10-ft. reinforced sidewalk in front of townhome lots 802 through 815. This larger sidewalk is required to provide emergency vehicle access to these townhomes that front on the community open space. Removable bollards are located where this 10-ft sidewalk meets Macdonough Place and Constitution Street.

The expanded community open space contains 5-ft. sidewalks that are linked to the site's perimeter and internal sidewalks, with marked street crossings at appropriate locations. The sidewalk network provides internal pedestrian mobility and facilitates movement to and from adjacent land uses. Sidewalks are provided that link the entire Westview South Residential project to the commercial uses to the east. The pedestrian network connects the larger project to the Ballenger Creek Trail.

- **Right of Way and Paved Surface Widths §1-16-235**

Whenever a proposed subdivision includes or abuts streets designated on the Highway Plan section of the Comprehensive Plan, the Planning Commission shall require, by dedication to public use, adequate right-of-way for the coordination of roads within the subdivision with other existing, planned or platted roads.

The County Comprehensive Plan classifies New Design Road and MD 85 as Major Arterials. Executive Way is identified as a local road. Right of way for these roads has been provided according to County standards and improvements to these roads have been or will be completed in the near future. Roads within the subdivision provide the standard right of way and paved surface widths required by the County. No changes to these roadways are proposed as part of the Phase 1.3C modifications.

- **Other Street Requirements §1-16-236K**

The revisions proposed in Phase 1.3C do not propose cul-de-sacs. McHenry Place and Suffrage lane are private alleys that truncate with "T-type" turn arounds at the edges of the community green space. These T-type turn arounds are considered dead end streets. Within MXD projects, the length of a dead end street may vary depending on several factors such as lot size, unit types and proposed land use. Dead end streets are reviewed and approved by the Planning Commission on a case by case basis. Staff worked with the Applicant to achieve a re-design of the project that provided for a larger, concentrated, useable open space area. In addition, the private alley T-turn arounds enhance the efficiencies of the rear-loaded unit design of this portion

of the development. The proposed design enhances community resources within the project. The Phase 1.3C revisions to Westview South meet the relevant requirements of this section.

- **Transportation and Parking §1-19-3.300.4 (B)**

The transportation system and parking areas are adequate to serve the proposed use in addition to existing uses by providing safe and efficient circulation, and design consideration that maximizes connections with surrounding land uses and accommodates public transit facilities.

The Westview South Residential project has one limited access point with New Design Road and multiple access points with Executive Way. The entire project's proposed road network links existing and planned road networks, promotes safe and efficient circulation and allows shared access and circulation between properties.

Parking standards for the project are provided within Zoning Ordinance §1-19-6.220 and §1-19-3.300.4(B). The 2016 Westview South Preliminary/Site Plan received a parking modification to allow on-street parking spaces to address the deficit in on-lot parking spaces in the entire project.

Within Phase 1.3C currently under review, the total required parking is 175 spaces: 60 for the townhome lots, and 115 for the two-over-two units, for a total of 175 parking spaces. The Project proposes a supply of parking spaces in the revised 1.3C plan area in the following quantities:

Unit Type	# of Dwellings	Parking Spaces Required (Phase 1.3C)	On-lot Parking Spaces Provided ¹ (Phase 1.3C)
Single Family Attached Townhouse	24	60	72
Two over Two	46	115	69
Total		175	141
On-Street Parking ²			477

1) Based on the policy that only ½ of a garage parking space is counted toward provided parking.

2) Combination of off-lot public on-street, off-lot private on-street, and off-lot private parking bays within the entire Westview South Residential project.

Although an on-lot parking deficit is shown within Phase 1.3C for the two-over-two units, on-street parking is shown on all streets bordering Phase 1.3C. With the provision of 477 on-street parking spaces within the Westview South project, and the prior parking modification granted for the overall project, the proposed total supply of parking exceeds the target number of parking spaces.

Bicycle parking, per §1-19-6.220(H), must be provided in Multi-family developments in the ratio of 1 rack for each 10 units. The two-over-two units are considered multi-family for purposes of determining bicycle parking needs. Forty-six (46) two-over-two units are proposed in Phase 1.3C, resulting in the requirement of 5 bike racks. Seven (7) bike racks are shown in the community green/open space.

PUBLIC FACILITIES AND UTILITIES

- **Public Facilities - Road Adequacy §1-16-12**

The overall project has one limited access point (no left out movement permitted) to New Design Road (an 80' paved width major arterial adjacent to the project site). There also are three access points (two full-movement and one right-in only) along Executive Way, which is a designated local road that functions as a collector. Access and proposed sight distance at entry points along Executive Way and New Design Road are adequate. Access to the project is not changing as part of the modifications to Phase 1.3C.

The subdivision would be served by the Westview/United Fire Company Service Area. The fire company is located on and would utilize New Design Road to serve the project.

- **Parks §1-16-111**

At the time of Phase I rezoning for the Westview South MXD, open space/green area requirements were set at 63 acres. Condition 3 of the Phase I rezoning approval (Ord.# 13-10-638) requires dedication by the developer of a 22.49 +/- acre public use site for park purposes prior to recordation of the Project's first residential lot. This public use site is planned to provide a portion of the Ballenger Creek Trail. This site was conveyed to the County on February 17, 2015 per the deed recorded in the Frederick County land records in Book 10423 on page 0083.

The Applicant provided a recreation area containing a community center and pool, as shown on the initial 2014 Westview South Preliminary/Site Plan. A separate site development plan for this community center/pool was approved on June 10, 2015 (AP#15160).

The proposed revised Combined Preliminary/Site Development Plan for Phase 1.3C identifies a larger community green/open space, centrally located between Constitution Street and MacDonough Place, south of Delegate Place. The new open space is approximately 41,000 square feet and contains benches, sidewalks, shade trees, and pole lights. This additional recreation area increases the amount of amenity relative to the approved amenities plan and enhances the open space network provided in the original plan. In accordance with the Phase I approvals, cover sheet Note 9 provides that the project is exceeding the parks requirement by providing considerably more than the required 9.03 acres of park space.

- **Public Utilities §1-19-3.300.4 (C)**

Where the proposed development will be served by publicly owned community water and sewer, the facilities shall be adequate to serve the proposed development.

The Project is to be served by public water and sewer service and carries a current Water and Sewerage Plan classification of W-3, S-3. The Site will be served by the New Design Water System and the Ballenger-McKinney Waste Water Treatment Plant. The proposed revisions in Phase 1.3C have been reviewed and approved by the Division of Utilities and Solid Waste Management.

A second amended and restated Adequate Public Facilities Ordinance Letter of Understanding (LOU) was approved in May of 2014 as part of the prior application.

NATURAL FEATURES

- **Land Requirements §1-16-217(B)**

The subdivision design shall take advantage of the uniqueness of the site reflected by the topography, soils, the wooded areas, water bodies and the relationship to adjoining subdivisions and land uses, both proposed and existing.

A major feature of the overall Westview South Residential project that contributes to its uniqueness is the Ballenger Creek corridor and the associated trail network being developed along the length of the creek. The overall project takes advantage of this adjacent feature by providing a planned connection to the open space corridor and trail along Ballenger Creek. This proposed revision does not affect trail access. The Site does not contain wet or flooding soils or wooded areas.

- **Floodplain Developments §1-16-220**

There is no development proposed in the mapped FEMA 100-year floodplain on the Project Site.

- **Natural features §1-19-3.300.4 (D)**

Natural features of the site have been evaluated and to the greatest extent practical maintained in a natural state and incorporated into the design of the development. Evaluation factors include topography, vegetation, sensitive resources, and natural hazards.

The Project Site has low topographical gradients and has undergone mass grading in preparation for development. The Site has no existing forest cover and other existing natural resources, such as Ballenger Creek, have been identified, preserved, or integrated into the recreational amenities of the development in a fashion that maintains a natural state.

COMMON AREAS

- **Common Areas §1-19-3.300.4 (E)**

If the plan of development includes common areas and/or facilities, the Planning Commission as a condition of approval may review the ownership, use and maintenance of such lands or property to ensure the preservation of such areas, property, and facilities for their intended purposes.

The Phase 1.3C revisions enhance a previously approved, centrally located community green /open space area. Additionally, a community center, swimming pool, and adjacent park space was approved in the Westview South Residential project in 2014. With the exception of the Ballenger Creek Trail corridor, proposed open space and common areas will be owned and maintained by the community homeowners association.

Other Applicable Regulations

- **Moderately Priced Dwelling Units – Chapter 1-6A**

Per Section 1-19-8.620.2, all residential developments consisting of 25 units or more on public water and sewer are required to provide no less than 12.5% of the total units as MPDU's. Accounting for the current revision of the plan, an overall total of 542 dwellings is proposed. Therefore, 68 MPDU's are required. However, the Applicant has elected to utilize the Payment-in-Lieu of building option as allowed in accordance with §1-6A-5.1 of the Frederick County Code.

The Applicant shall amend the current MPDU Agreement through the Frederick County Department of Housing. Note 6 on the plan must be revised to include the recording reference for the amended MPDU Agreement.

- **Stormwater Management – Chapter 1-15.2**

A stormwater management concept plan for the entire project was approved on February 25, 2014. Changes proposed in this revision will be addressed as the plan proceeds through Improvement Plan review.

- **APFO – Chapter 1-20**

A Second Amended and Restated APFO Letter of Understanding, (AP #13146) was approved and effective May 21, 2014 and effective through February 12, 2019. This approval was for 12, 500 sq ft of employment use and 531 dwelling units. The conditions of the approved LOU have been satisfied. This proposed plan is exempt from further APFO consideration based upon the following analysis:

Schools

An analysis of student yield was completed based on the change in dwelling unit mix proposed in the current project. Using the 2012 student yield rates in effect at the time the APFO application was submitted, the proposed project combined with the remaining residential portion of Westview South, is projected to generate 116 elementary school students, 40 middle school students and 58 high school students, equal to or less than the three school categories in the previous APFO approval. The previous approval, generated 116, 40 and 59 students respectively. Therefore, the overall decrease in total units from 600 to 542 together with the new mix of units results in no increase in student yield and therefore this application is exempt from APFO re-testing.

Water/Sewer

The property has a current Water and Sewerage Plan classification of W-3/Dev, S-3/Dev and will be served by public water and sewer facilities. The Division of Utilities and Solid Waste Management reviewed and approved the proposed plan, finding that further testing for water/sewer is not required

Roads

Trip allocation for the entire Westview South Project was determined by the APFO findings of the Planning Commission in February 2003 and as memorialized in the original LOU from September of 2005, with total trip caps as follows: 2048 am and 2186 pm peak hour trips. The trip generation based on the proposed change in residential dwelling unit number (600 to 542) and mix results in a decrease of 3 am and 7 pm peak hour residential trips, relative to the prior approval. Therefore because there is no increase in trip intensity with the changes proposed in this application, it is exempt from any further APFO testing. The conditions of the approved LOU have been satisfied.

- **Forest Resource – Chapter 1-21:**

The FRO plan for this Project was approved in 2008 (AP7278) and the required FRO easements were recorded. The change in the dwelling unit mix does not impact the previously approved FRO.

- **Historic Preservation – Chapter 1-23:**

No historically significant structures or other resources are present on this Site.

Summary of Agency Approval Status

Other Agency or Ordinance Requirements	Comment
Development Review Engineering (DRE)	Conditionally Approved
Development Review Planning	Hold
State Highway Administration (SHA)	Approved
Division of Utilities and Solid Waste Management (DUSWM)	Conditionally Approved
Health Department	Approved
Office of Life Safety	Approved
Development Review Traffic Engineering	Conditionally Approved
Historic Preservation	Approved
Forest Resource (FRO)	Approved

RECOMMENDATION

Staff has no objection to conditional approval of the revised Westview South Residential Combined Preliminary Subdivision/Site Development Plan, Phase I.3C.

If the Planning Commission conditionally approves the Combined Preliminary Subdivision/Site Development Plan, the Site Development Plan is valid for a period of three (3) years from the date of Planning Commission approval and the Preliminary Plan is valid for a period of five (5) years. However, both are limited by the term of the APFO approval. Therefore, both the Site Development Plan and the Preliminary Plan are valid until February 12, 2019

Based upon the findings and conclusions as presented in the staff report the application meets or will meet all applicable zoning, APFO, and FRO requirements once the following conditions are met:

1. The Applicant shall address all agency comments as the plan proceeds through to completion.
2. Planning Commission approval of the proposed dead-end streets (McHenry Place and Suffrage Lane).
3. Planning Commission approval of the proposed lot sizes, setbacks and height.
4. Planning Commission approval of the parking modification to all the use a combination of on-street and on-lot parking spaces to meet the target parking requirements.

5. Prior to signature approval the Applicant shall update Sheet 3 Landscape Plan to include installation of 3-5 ft. tall shrubs in-lieu of street trees along the entire west side of Macdonough Place within the limits of Phase 1.3C.
6. Prior to signature approval the Applicant shall provide specifications for the proposed wall-mounted lights or remove the wall mounted lighting reference from Note No. 7, and update the photometric plan (page 5) to ensure compliance with the requirements of the zoning ordinance.
7. The Applicant shall amend the existing MPDU Payment in Lieu Agreement administered by the Frederick County Department of Housing and Community Development to update the total number of dwelling units to 542 and the resulting required MPDUs to 68 based upon the Westview South Revised Phase 1.3C Combined Preliminary/Site Plan. The agreement shall be amended and recorded with the recording reference added to Cover Sheet General Note 6 of the plan prior to issuance of the first building permit in Phase 1.3C.

PLANNING COMMISSION ACTION

MOTION TO APPROVE

I move that the Planning Commission **APPROVE** the Westview South Residential Combined Preliminary Subdivision/Site Development Plan, Phase 1.3C (AP#17503, S-905, SP-98-36), for remove 128 multi-family units and replace them with 24 townhomes and 46 2 over 2 units. The approval is made **with conditions and modifications** as listed and is based on the findings and conclusions of the staff report, the testimony, exhibits, and documentary evidence produced at the public meeting.

Exhibit 1 – Site Plan – Westview South Residential Plan with Phase 1.3 outlined



Exhibit 2 – Site Plan – Westview South Residential Plan with Phase 1.3 enlarged



ILLUSTRATIVE PLAN
FOR
WESTVIEW SOUTH
REVISED PHASE 1.3
COMBINED PRELIMINARY/SITE

Exhibit 3 – Westview South Residential – Current approved Plan with Phase 1.3 outlined



DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT

THIS DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT ("Agreement"), made as of the 13th day of June, 2013, by and between WVS PARCEL 102, LLC; WVS PARCEL 200, LLC; WVS PARCEL 204, LLC; WVS PARCEL 300, LLC; WVS PARCEL 400, LLC; WBP PARTNERS II, LLC; and ITB2, LLC, all Maryland limited liability companies¹ (collectively, the "Developer"); and THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, a body politic and corporate of the State of Maryland (the "BOCC").

RECITALS

1. Maryland law, Land Use Article §7-301 through §7-306 (formerly Article 66B, § 13.01) of the Maryland Annotated Code, grants the BOCC the authority to establish procedures and requirements for the consideration and execution of Development Rights and Responsibilities Agreements.

2. The BOCC has adopted Ordinance No. 07-33-473, effective as of November 16, 2007, creating Chapter 1-25 of the Frederick County Code authorizing Development Rights and Responsibilities Agreements ("County Ordinance").

3. This document is intended to constitute a Development Rights and Responsibilities Agreement as provided for in Land Use Article §7-301 through §7-306 of the Maryland Annotated Code, and the County Ordinance, and includes a determination of adequacy under the Adequate Public Facilities Ordinance as permitted by Section 1-20-20(C) of the County Code.

4. Developer owns certain real property in Frederick County, Maryland, described in EXHIBIT A attached hereto and made part hereof (the "Property").

5. The names of all parties having an equitable or legal interest in the Property, including lienholders, are set forth in EXHIBIT B. Attached hereto and made a part hereof as EXHIBIT C is certification by counsel to the Developer that the Developer has a legal interest in the Property.

6. On November 8, 2012, Developer petitioned the BOCC to enter into this Agreement.

¹ Applicant ownership interests are as follows: (i) WVS Parcel 102, LLC (fee simple owner of Lot 102); (ii) WVS Parcel 200, LLC (fee simple owner of Lot 200); (iii) WVS Parcel 204, LLC (fee simple owner of Lot 204); (iv) WVS Parcel 300, LLC (fee simple owner of Parcel 300); (v) WVS Parcel 400, LLC (fee simple owner of Parcel 400 and Parcel G); and WBP Partners II, LLC and ITB2, LLC (fee simple owners of Lot 26, Wedgewood Business Park).

7. During a public meeting held on December 13, 2012, the BOCC reviewed this petition and determined to accept this petition and initiate the process of considering a Development Rights and Responsibilities Agreement.

8. This Agreement was referred to the Frederick County Planning Commission for determination of whether this Agreement is consistent with the Countywide Comprehensive Plan for Frederick County ("Comprehensive Plan"). This determination was made by the Planning Commission at a public meeting held on April 24, 2013.

9. On May 21, 2013, the BOCC held a duly advertised public hearing on this Agreement. The public had an opportunity to comment at this public hearing.

10. The Developer is pursuing the Development Approvals necessary to develop the Property in accordance with the Rezoning Ordinance approved by the BOCC concurrent with the review and approval of this DRRA. This DRRA is expressly intended to contractually bind the Developer and the County as to the development of the Property in accordance with the terms hereof. This DRRA is intended to protect, preserve and facilitate the full development of the Project pursuant to the Development Approvals, the APFO LOU, and this DRRA, including, but not limited to, residential and non-residential uses and densities as set forth herein and in the Rezoning Ordinance.

NOW, THEREFORE, in consideration of the foregoing recitals, which are not merely prefatory but are hereby incorporated into and made a part of this Agreement, and the mutual covenants and agreements set forth below, and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the BOCC and the Developer hereby agree as follows:

ARTICLE I DEFINITIONS

1.1 Definitions. The following words, when used in this Agreement, shall have the following meanings:

A. "Agreement" means this Development Rights and Responsibilities Agreement.

B. "APFO LOU" means the Adequate Public Facilities Ordinance Letter of Understanding that is pending approval by the BOCC concurrent with Phase I approval and approval of this DRRA, attached hereto as EXHIBIT D.

C. "BOCC" means the Board of County Commissioners of Frederick County, Maryland, a body corporate and politic, also sometimes referred to as "County Commissioners."

D. "County Code" means the Code of Frederick County, Maryland in effect on the Effective Date of this Agreement.

E. "County Ordinance" means County Ordinance No. 07-33-473 creating Chapter 1-25 of the Frederick County Code and authorizing Development Rights and Responsibilities Agreements.

F. "Developer" means WVS Parcel 102, LLC; WVS Parcel 200, LLC; WVS Parcel 204, LLC; WVS Parcel 300, LLC; WVS Parcel 400, LLC; WBP Partners II, LLC; and ITB2, LLC, all Maryland limited liability companies, and their respective successors and assigns in ownership of the Property.

G. "Development Approvals" means final governmental approval of Subdivision Plat(s), Adequate Public Facilities Ordinance ("APFO") requirements, MXD Phase I and II for Westview South (including all Preliminary Plans and Site Plans as applicable), and all conditions of said approvals that have been satisfied, or acceptable accommodations and/or guarantees have been put in place to satisfy such conditions, and all applicable appeal periods have expired without the filing of any appeal, or, if an appeal(s) was filed, the appeal has been defeated beyond the possibility or existence of further appeal of any kind.

H. "Effective Date of this Agreement" means the date the last party executes this Agreement.

I. "Existing LOU" means the approved Adequate Public Facilities Ordinance Letter of Understanding, signed by the Frederick County Planning Commission on September 14, 2005, valid through February 12, 2019.

J. "Improvements" or "improvements" means those improvements referenced herein or in the APFO LOU to be constructed, but only to the extent not previously constructed, in connection with roads, sewer, water, stormwater, parks and other facilities necessary to service the Property.

K. "Westview South" means the approved Mixed Use Development to be constructed on the Property, sometimes also referred to as the "Project."

L. "Phase" means any portion or section of the Project which has received Development Approval.

M. "Planning Commission" means the Planning Commission for Frederick County Maryland.

N. "Project" means the remaining portions of Westview South owned by Developer, to be constructed on the Property.

O. "Property" means all of the real property described in EXHIBIT A attached hereto.

P. "Rezoning Ordinance" means Ordinance No. 13-10-638, approving the revised Phase I MXD Plan for the Property.

Q. "Subdivision Plat" means final plat(s) of subdivision for the Project, or any Phase or portion thereof, prepared in accordance with the County Code and approved by the Planning Commission.

ARTICLE II ZONING, DEVELOPMENT LIMITATIONS, PLAN APPROVALS AND PLAN CONSISTENCY

2.1 Zoning and Plan Designations. The Property is zoned Mixed Use Development ("MXD"). The Property is located within the Community Growth Limit of the Ballenger Creek Community Growth Area as shown on the 2010 Frederick County Comprehensive Plan as amended on September 13, 2012; designated Office/Research/Industrial and Limited Industrial on the 2010 Frederick County Comprehensive Plan as amended on September 13, 2012; and located within the Water and Sewer Service Areas on the current Frederick County Water and Sewerage Plan.

2.2 Development Limitations.

A. Permissible Uses and Density. The permissible uses on the Property are those permitted in the County Code. The Project shall be developed as an MXD pursuant to and in accordance with the provisions of Section 1-19-10.500 of the County Code. The Project will contain a mix of employment uses, commercial/retail uses and housing types. A maximum of six hundred and fifteen (615) residential dwelling units are permitted in the Project pursuant to the Rezoning Ordinance. The density and/or intensity of the non-residential portions of the Project shall be governed by the applicable provisions of the Frederick County Zoning Ordinance.

B. Development Requirements. The Property shall be developed in accordance with, and subject to, the conditions and requirements of the Development

Approvals that are required pursuant to County Code, which Development Approvals shall be based upon the terms and conditions of this Agreement. Setbacks, building size and other development standards shall be as approved by the Planning Commission in accordance with the Development Approvals and applicable sections of the County Code. The maximum height for residential units in the Project shall be 50 feet for single family structures and 120 feet for multifamily structures. The maximum height for non-residential structures in the Project shall be 120 feet. The final height of all structures shall be determined by the Planning Commission at the time of preliminary plan or site plan review process. No individual building in the Project shall exceed 500,000 square feet of gross floor area. The parties acknowledge and agree that the County Code contemplates flexibility for MXD projects, in order to facilitate excellence of design and responsiveness to market conditions.

C. *Revision of Use Mix.* Subject to compliance with the Rezoning Ordinance and applicable provisions of the land development and APFO provisions of the County Code, Developer shall have the ability to revise the mix of residential unit types in the Project (subject to the cap of 615 residential dwelling units established in the Rezoning Ordinance) and to revise the mix of square footage allocated to commercial and employment uses in the Project without the need to obtain further revisions to the MXD Phase I Plan. Developer shall be permitted to stage the timing of development of the various uses in the Project in response to market demand.

D. *Historic Structures.* There are no historic structures on the Property.

2.3 *Other Development Approvals and Permits.* The Project has obtained certain Development Approvals, including, but not limited to, those noted in EXHIBIT F, attached hereto and made a part hereof.

The Project shall be required to comply with all other applicable requirements of the County Code for land development, including, but not limited to, site improvement plans (for water, sanitary sewer, and storm drainage and sediment, and erosion control improvements), water and sewer amendments, Subdivision Plats, building permits, and occupancy permits. The Project shall also be required to obtain all applicable State or federal approvals and permits.

2.4 *Consistency with Comprehensive Plan.* On April 24, 2013, the Planning Commission made the necessary determination as to whether this Agreement is consistent with the Frederick County Comprehensive Plan. By execution of this Agreement, the BOCC has determined that this Agreement is consistent with the Frederick County Comprehensive Plan and with the development regulations of Frederick County, Maryland.

2.5 Public Health, Safety and Welfare. The BOCC has determined that the conditions, terms, restrictions or other requirements of this Agreement are necessary to ensure that the public health, safety and welfare of the citizens of Frederick County are protected.

ARTICLE III
ROAD IMPROVEMENTS, SEWER IMPROVEMENTS,
WATER IMPROVEMENTS, SCHOOL IMPROVEMENTS,
AND OTHER COMMUNITY FACILITIES

3.1 Road Improvements.

A. Road Improvements. Road Improvements have been satisfied, pursuant to the Existing LOU, and further evidenced by the APFO LOU, a copy of which is attached hereto as EXHIBIT D.

B. Building Excise Tax. Currently, the building excise tax provided for in Section 1-8-73 of the County Code is established at zero dollars (\$0.00). In recognition of the overall package of road improvements constructed or to be constructed by the Developer and/or Developer's predecessor, including substantial funding contributions for regional road improvements beyond the requirements of the APFO, the excise tax shall be zero dollars (\$0) for the term of this Agreement.

3.2 Sewer Improvements. Public sewer shall be extended to the Property as provided for in the APFO LOU. The Project will pay tap fees in accordance with the current fee schedule in effect at the time of application and the County shall issue such tap approvals in the normal course as a ministerial function. The Developer may request sewer capacity fee credits pertaining to the provision of public sewer to the Property if the applicable requirements of the Frederick County, Maryland Water and Sewer Rules and Regulations are satisfied.

3.3 Water Improvements. Public water shall be extended to the Property as provided for in the APFO LOU. The Project will pay tap fees in accordance with the current fee schedule in effect at the time of application and the County shall issue such tap approvals in the normal course as a ministerial function. The Developer may request water capacity fee credits pertaining to the provision of public water to the Property, if the applicable requirements of the Frederick County, Maryland Water and Sewer Rules and Regulations are satisfied.

3.4 Schools and Community Facilities.

A. School Construction Fee. The School Construction Fee was established by Ordinance 11-18-584, enacted on July 20, 2011 and codified as Section 1-20-62 of the APFO, with a sunset provision of five (5) years from the effective date. Notwithstanding a sunset of the School Construction Fee Ordinance, the parties intend: (i) that the Developer

shall be bound to pay the School Construction Fee as a condition of APFO approval for the Project, (ii) that this provision shall survive the sunset of the Ordinance, which shall be deemed to run with the full term of this Agreement and any duly approved extensions thereof and (iii) that payment of the School Construction Fee shall satisfy the Developer's school adequacy obligations under the APFO (unless the density or intensity of the Project is increased) and any school adequacy obligations that may be enacted in the future. The School Construction Fee shall be paid as provided in Section 1-20-62 of the APFO and in accordance with the fee schedule in effect at the time of plat recordation or the issuance of building permit, as applicable. If after the five year sunset the Frederick County Code no longer provides for the calculation of the School Construction Fee, then the school construction fee for purposes of this Agreement shall thereafter be based on the previous year's fee schedule, adjusted annually per the State of Maryland School Construction Cost Index, for the duration of this Agreement.

B. *School Impact Fees.* Applicable School Impact Fees shall be paid at the time of the issuance of building permits in accordance with the fee schedule in effect at the time of the issuance of building permits.

C. *Payment for School Site.* In lieu of dedicating a school site at the Project, Developer shall pay Eight Hundred Thousand Dollars (\$800,000.00) toward the acquisition, planning and/or construction of an elementary school site in the vicinity of the Project within 30 days after final approval by the Frederick County Planning Commission and Frederick County staff signature of Phase II of the Project. For purposes of this provision, "final approval" shall be deemed to be the approval referenced above and the expiration of any applicable appeal period with no appeals being filed. In the event of a timely appeal of the Project's Phase II approval, "final approval" shall be deemed to have occurred upon the successful defense of any such appeal with no further appeal rights of the Project's Phase II approval. This payment shall not be used as an offset against or credit toward impact fees or School Construction Fees paid in connection with the Project.

D. *Public Use Site.* Prior to recordation of the Project's first residential lot, Developer shall convey, if desired by the County, a 22.49 +/- acre public use site generally located as shown on the Concept Plan of the MXD Phase I Plan (the "Park Site") for future discretionary use by the County. In the event the County requires access to Park Site prior to fee simple conveyance, the Developer will provide easements as reasonably necessary. The Developer shall not be responsible for any Park Site improvements.

ARTICLE IV [INTENTIONALLY OMITTED]

ARTICLE V MODERATELY PRICED DWELLING UNITS

5.1 In accordance with the provisions of Section 1-6A-5.1(G) of the County Code regarding moderately priced dwelling units ("MPDUs"), Developer hereby elects to utilize, and the BOCC agrees to permit Developer to utilize, the Payment in Lieu of Building MPDUs as provided in Section 1-6A-5.1 aforesaid, as in existence as of the date hereof, in lieu of the prior MPDU requirements for a residential developer. A draft Moderately Priced Dwelling Unit Payment In Lieu Agreement is attached hereto and made part hereof as EXHIBIT E.

ARTICLE VI DEVELOPMENT REVIEW

6.1 Timely Development Review. The BOCC agrees to use reasonable efforts to ensure that all remaining Development Approvals, including but not limited to, preliminary plan approval, site development plan approval, final subdivision and final improvement plan review are performed in a succinct, timely manner, without undue delay, consistent with the County's development review process.

6.2 Timely Submission of Documents. The Developer agrees to submit complete and succinct plans and documents for the remaining Development Approvals as required per County codes, ordinances, policies or procedures, in a timely manner.

ARTICLE VII SURVIVAL AND TRANSFER OF OBLIGATION

7.1 Nature, Survival, and Transfer of Obligations. The Developer agrees that this Agreement shall run with the land and be binding upon and inure to the benefit of the Developer and its successors and assigns (except owners of an individual lot, unit or parcel improved pursuant to a validly issued building permit or dwelling purchased solely for use as a private residence and except owners of finished non-residential buildings constructed pursuant to validly issued building permits), and upon any and all successor owners of record of all or any portion of the Property (except owners of an individual lot or unit improved pursuant to a validly issued building permit or dwelling purchased solely for use as a private residence and except owners of finished non-residential buildings constructed pursuant to validly issued building permits). To assure that all such successors, assigns, and successor owners have notice of this Agreement and the obligations created by it, the Developer agrees that it shall:

A. Have this Agreement recorded among the Land Records of Frederick County within twenty (20) days after the Effective Date of this Agreement; and

B. Use commercially reasonable efforts to incorporate, by reference, this Agreement into any and all real estate sales contracts entered into after the Effective Date of this Agreement for the sale of all or any portion of the Property.

7.2 Binding Upon Successors and Assigns of The BOCC. The BOCC agrees that all obligations assumed by the BOCC under this Agreement shall be binding on the BOCC, its agencies, governmental units, the Planning Commission and its and their respective successors and assigns, including, but not limited to, the future County Council and County Executive, when Frederick County transitions to a charter form government.

ARTICLE VIII BREACH AND REMEDIES

8.1 *Breach by Developer.*

A. *Breach-General.* If the Developer shall fail or refuse to perform its obligations as required hereunder, then the BOCC shall provide written notice to the Developer indicating the nature of the default. Developer shall have thirty (30) days following the receipt of such written notice to cure the default described in such notice; provided, however, if the Developer shall proceed with due diligence to cure said default after said notice, then such thirty (30) day period shall be extended to such a period of time as may reasonably be required to cure such default while proceeding with due diligence. If the Developer has not cured the default within the said cure period, the BOCC may seek and obtain equitable relief to enforce the terms and conditions of this Agreement either through a decree for specific performance or an injunction. Should the remedies of specific performance or injunction not be available to the BOCC because of actions of Developer, then the BOCC shall be entitled to bring a legal action for damages.

B. Developer hereby waives trial by jury in connection with any proceedings brought to enforce the terms of this Agreement.

8.2 *Breach by BOCC.*

A. *Breach-General.* If the BOCC shall fail or refuse to perform its obligations as required hereunder, then the Developer shall provide written notice to the BOCC indicating the nature of the default. The BOCC shall have thirty (30) days following the receipt of such written notice to cure the default described in such notice; provided, however, if the BOCC shall proceed with due diligence to cure said default after said notice, then such thirty (30) day period shall be extended to such a period of time as may reasonably be required to cure such default while proceeding with due diligence. If the BOCC has not cured the default within the cure period, the Developer may seek and obtain equitable relief to enforce the terms and conditions of this

Agreement either through a decree for specific performance or an injunction. Should the remedies of specific performance or injunction not be available to the Developer because of actions of the BOCC, then the Developer shall be entitled to bring a legal action for damages.

B. The BOCC does hereby waive trial by jury in connection with any proceedings brought to enforce the terms of this Agreement.

ARTICLE IX EFFECT OF DEVELOPMENT REGULATIONS

9.1 Effect of Agreement.

A. Except as otherwise specifically provided herein, the laws, rules, regulations and policies governing the use, density or intensity of the Property, including, but not limited to, those governing development, subdivision, growth management, impact fee laws, water, sewer, stormwater management, environmental protection, land planning and design and adequate public facilities (hereafter collectively the "Development Laws"), shall be the laws, rules, regulations and policies, if any, in force on the Effective Date of the Agreement, and the Developer shall comply with all such federal, state and local Development Laws.

B. If the BOCC determines that compliance with Development Laws enacted or adopted after the Effective Date of this Agreement is essential to ensure the health, safety or welfare of residents of all or part of Frederick County, the BOCC may impose the change in laws, rules, regulations and policies and the effect thereof upon the Property.

9.2 Approvals Required. Developer shall obtain all approvals necessary under any provision of local, state or federal law before proceeding with development of the Project. Notwithstanding anything to the contrary contained herein, this Agreement does not control or affect laws, regulations or approvals which are not within the control of the County. This Agreement does not address any approvals required by state or federal law and Developer shall be responsible for obtaining any approvals required by state or federal law.

9.3 Fees. Except as provided in Sections 3.1.B and 3.4.A above, Developer shall pay all fees (specifically including, but not limited to, impact fees, school mitigation fees and water and sewer connection fees) required by Frederick County at the rate in effect at the time the fee is due. In the event that any such fees, including the school construction fee referenced in Section 3.4.A above, are eliminated by a change in the law and replaced with a procedure or requirement that would impose some other burden on the Developer, the Developer may elect to pay the fee in effect prior to the change in the law. Impact fees shall be paid at the time of issuance of building permits. Developer does not waive the right to claim credits for impact fees, excise taxes, surplus capacity reimbursements, water and sewer connection fees, school impact fees and

any similar fees or tax credits which may be available in accordance with County policies and regulations. Nothing in this Agreement shall be construed as a waiver or reduction of any such fees.

9.4 Developer's Reliance. The BOCC acknowledges that the Developer would not make the long term financial commitments necessary to build out the Project in accordance with the approved MXD Phase I Plan or to provide the proffered infrastructure improvements, without Frederick County's commitment to allow the Project to be governed by and subject to the development laws in effect as of the Effective Date of this Agreement, to the maximum extent permitted by law.

9.5 Moratorium. In the event that a "moratorium" (as hereinafter defined) is declared or imposed, then any lot recordation and the Developer's rights to construct residential units and commercial structures on the lots or on the Property pursuant to any Development Approval for any section of the Project shall be extended for one (1) additional day for each day during which such moratorium exists, and the Project shall not be subject to any additional regulation, legislation, limitation, phasing, contributions, penalties or delay in construction, or issuance of zoning certificates/building permits as a result of the moratorium. Further, in the event that a moratorium is declared or imposed, then any deadline concerning the Developer's obligation to construct, install, fund or post financial guarantees for the infrastructure improvements required pursuant to any Development Approval for the Project shall be extended for one (1) additional day for each day during which such moratorium exists, and the Project shall not be subjected to any additional regulation, legislation, limitation, phasing, contributions, penalties or delay in construction, or issuance of zoning certificates/building permits as a result of the moratorium. The term "moratorium" shall mean the implementation or declaration by the United States Government, State of Maryland, Frederick County, and/or any agency, department, division and/or branch thereof for purposes of a limitation, prohibition, restriction and/or phasing upon the review, recording, development and construction upon lots in the Project as intended by Developer, or a de facto moratorium imposed by any applicable governmental authority which has the effect of denying the Developer the ability to record lots or obtain permits for the Project pursuant to any Development Approval. Nothing in this Agreement shall be interpreted as exempting Developer from compliance with laws, regulations, and policies of the County or the State, including, without limitation, those of the Maryland Department of the Environment or the Frederick County Division of Utilities and Solid Waste Management concerning the allocation of water and sewer and related matters.

ARTICLE X MISCELLANEOUS

10.1 Time of Essence. Time is of the essence in the performance of all terms and provisions of this Agreement.

10.2 Term. This Agreement shall constitute covenants running with the land and shall run with and bind the Property so long as the Project is under development. This Agreement shall terminate and be void twenty-five (25) years after the Effective Date of this Agreement unless extended by an amendment complying with all procedures required in this Agreement, the County Ordinance and the State Law. The parties acknowledge and agree that the Term of this Agreement is justified by the: (1) substantial economic investment made by the Developer for the development of the Project; (2) substantial economic investment made by the Developer in public facilities which serve to advance public purposes; (3) public purposes to be advanced by development of the Project in accordance with the Development Laws; (4) uncertainty of future market demands and political pressures; and (5) expectations of the parties.

10.3 Notices. All notices and other communications in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof (1) when delivered in person on a business day at the address set forth below; or (2) on the third business day after being deposited in any main or branch United States post office for delivery by properly addressed, postage prepaid, certified or registered mail, return receipt requested, at the address set forth below; (3) upon transmission, if sent by electronic mail, to the e-mail addresses set forth below; or (4) on the day following deposit with Federal Express or other national overnight courier.

Notices and communications to the Developer shall be addressed and delivered to the following address:

c/o Matan Development, LLLP
4600 Wedgewood Blvd, Suite A
Frederick, MD 21703
Attn: Karl A. Morris, Director of Development
Phone: 301-694-9200
Email: karl@mataninc.com

with a copy to:

Law Offices of Rand D. Weinberg, LLC
15 North Court Street
Frederick, Maryland 21701
Attn: Rand D. Weinberg, Esquire
Telephone: (301) 698-2350
E-mail: rweinberg@rdweinberglaw.com

Philip D. Topper, Jr., LLC
110 North Court Street
Frederick, Maryland 21701
Attn: Philip D. Topper, Jr., Esquire
Telephone: (301) 696-9780
E-mail: PhilTopper@aol.com

Notices and communications to the BOCC shall be addressed and delivered to the following address:

The Board of County Commissioners for
Frederick County
12 East Church Street
Frederick, Maryland 21701
Attn: Lori L. Depies, County Manager
Telephone: (301) 600-1100
E-mail: ldepies@frederickcountymd.gov

With a copy to:

John S. Mathias, Esquire
County Attorney
12 East Church Street
Frederick, Maryland 21701
Telephone: (301) 600-1030
E-mail: jmathias@frederickcountymd.gov

Gary Hessong, Director
Director of the Dept. of Permits and
Inspections
30 North Market Street
Frederick, Maryland 21701
Telephone: (301) 600-2028
E-mail:
ghessong@frederickcountymd.gov

Eric Soter, Director
Community Development Division
30 North Market Street
Frederick, Maryland 21701
Telephone: (301) 600-1153
E-mail: esoter@frederickcountymd.gov

By notice complying with the requirements of this Section, each party shall have the right to change the address or addressee or both for all future notices and communications to such party, but no notice of a change of address shall be effective until actually received.

10.4 Amendments.

A. The parties to this Agreement may amend this Agreement by mutual consent after the BOCC holds a public hearing and complies with all applicable laws concerning amendment of a Development Rights and Responsibilities Agreement. All amendments to this Agreement shall be in writing and shall be executed by the BOCC and the Developer.

B. This Agreement may be amended in accordance with the applicable provisions of Chapter 1-25 of the Frederick County Code to incorporate subsequent Development Approvals and requirements for Phases of the Project.

10.5 Termination or Suspension. The parties to this Agreement may terminate or suspend this Agreement by mutual consent after the BOCC holds a public hearing and complies with all applicable laws concerning termination or suspension of a Development Rights and Responsibilities Agreement as set forth in the County Ordinance. If the BOCC determines that a suspension or termination is essential to ensure the public health, safety or welfare, as determined in accordance with Section 9.1.B above, the BOCC may suspend or terminate this Agreement following a public hearing. Any such unilateral termination of this Agreement by the BOCC shall not in any way affect the validity of any Development Approvals which have been obtained for the Project at the time of termination, including, but not limited to, APFO Approvals.

10.6 Authority to Execute. The BOCC hereby acknowledges and agrees that all required notices, meetings, and hearings have been properly given and held by the County with respect to the approval of this Agreement, and the Developer agrees not to challenge this Agreement or any of the obligations created by this Agreement on the grounds of any procedural infirmity or any denial of any procedural right. The BOCC hereby warrants and represents to the Developer that the person(s) executing this Agreement on its behalf have been properly authorized to do so. The Developer hereby warrants and represents to the BOCC (1) that it is the fee simple, record owner of the Property, (2) that it has the right, power and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth herein and to bind the Property as set forth herein, and (3) that all legal actions needed to authorize the execution, delivery and performance of this Agreement have been taken.

10.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.

10.8 Consent to Jurisdiction and Venue. The parties irrevocably consent to the jurisdiction and venue of the Circuit Court for Frederick County, Maryland or any federal court sitting in the District of Maryland for any proceedings brought with respect to this Agreement.

10.9 Remedies Cumulative. Each right, power and remedy of a party provided for in this Agreement, or any other agreement between the parties, now or hereafter existing, shall be cumulative and concurrent and in addition to every other right, power or remedy provided for in this Agreement or any other agreement between the parties, now or hereafter existing.

10.10 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

10.11 Recordation. As set forth in Section 7.1.A, the Developer shall have this Agreement recorded among the Land Records of Frederick County, Maryland within twenty (20) days after the Effective Date of this Agreement. In the event the Agreement is terminated following an appeal as provided for in Section 10.12 below, the parties agree to execute and record a document in the aforesaid Land Records to terminate this Agreement.

10.12 Appeals. Appeals by any person aggrieved by this Agreement shall be in accordance with applicable state law.

10.13 No Obligation to Approve. This Agreement shall not be interpreted or construed to impose any legal obligation on the BOCC or any of its boards, agencies, commissions or employees to approve any development, use, density or intensity other than as provided specifically in this Agreement. This Agreement shall not be interpreted or construed to impose any legal obligation on the BOCC to accept any other development requests.

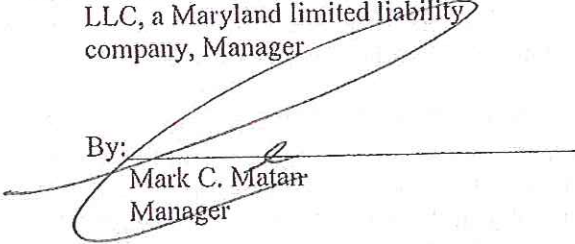
10.14 No Third Party Beneficiary Status. The parties specifically agree that this Agreement is not intended to create in the public or any member thereof, third party beneficiary status in connection with the performance of the obligations under this Agreement without the written consent of the BOCC and notwithstanding the BOCC's concurrence in or approval of the award of any contract or subcontract or the solicitation in fulfilling the obligations of this Agreement.

10.15 Appropriation Contingency. The BOCC's financial obligations, if any, under this Agreement are contingent upon sufficient appropriations and authorization being made by the BOCC for the performance of this Agreement. The BOCC's decision as to whether sufficient appropriations are available shall be accepted by the other parties to this Agreement and shall be final.

10.16 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

[SIGNATURES ON FOLLOWING PAGES]

WVS PARCEL 102, LLC,
a Maryland limited liability company
By: Westview South Holdings, LLC, a Maryland
limited liability company, Manager
By: Wedgewood Investment Management,
LLC, a Maryland limited liability
company, Manager

By: 
Mark C. Matan
Manager

Date: 6/12/13

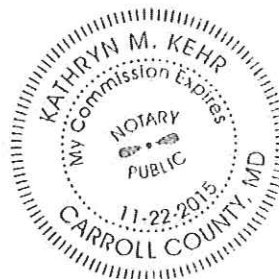
STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this 12 day of June, 2013, before me, the undersigned Notary Public of said State, personally appeared Mark C. Matan, who acknowledged himself to be the Manager of Wedgewood Investment Management, LLC, a Maryland limited liability company, Manager of Westview South Holdings, LLC, a Maryland limited liability company, Manager of WVS Parcel 102, LLC, a Maryland limited liability company, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained as the duly authorized Manager of Wedgewood Investment Management, LLC, the Manager of Westview South Holdings, LLC, the Manager of WVS Parcel 102, LLC.

WITNESS my hand and Notarial Seal.


Notary Public

My Commission Expires: 11-22-15



SECOND AMENDED AND RESTATED ADEQUATE PUBLIC FACILITIES
LETTER OF UNDERSTANDING
WESTVIEW SOUTH MXD

Preliminary Plat #S905 AP #13146

In General: The following Second Amended and Restated Adequate Public Facilities Letter of Understanding ("Letter") between the Frederick County Planning Commission ("Planning Commission") and WVS Parcel 102, LLC, WVS Parcel 200, LLC, WVS Parcel 204, LLC, WVS Parcel 300, LLC, WVS Parcel 400, LLC, WBP Partners II, LLC and ITB2, LLC (collectively, the "Applicant"), together with its/their successors or assigns, sets forth the conditions and terms which the Planning Commission deems to be the minimum necessary improvements dealing with school, water, sewer, and road improvements that must be in place for the property identified below to be developed, as proposed under the approved amendment to the Westview South MXD Phase I (the "Project"), in compliance with the Frederick County Adequate Public Facilities Ordinance ("APFO").

The Applicant, its successors or assigns, hereby agrees and understands that unless the required contributions are provided in accordance with this Letter, APFO requirements will not be satisfied and development will not be permitted to proceed.

This Letter concerns itself with the Applicant's parcels of land totaling 117.83 +/- acres, zoned Mixed Use Development (MXD), and located on the north and south sides of Executive Way. This APFO approval will be effective for development of (a) the additional 122,500 square feet of employment use approved under, and set forth in, the 2013 LOU (defined below); and (b) 531 dwelling units, including approximately 125 single family detached units, 188 single family attached units (townhomes), 62 two-over-two units and 156 multi-family units (apartments/condos), or any variation of dwelling unit mix such that the intensity of total peak hour vehicle trips or the school student generation is not increased above that analyzed in the "Westview South Land Bays 2, 3, and 4" memorandum prepared on behalf of the Applicant by Wells and Associates, LLC, dated February 22, 2013 (as amended by the Table 2 Update by Wells and Associates, LLC, dated January 16, 2014) or the student projections described below. This Letter does not affect the Project's allowed maximum density of 615 residential dwelling units, as designated pursuant to the Project's Phase I Plan (Ordinance No. 13-10-638, dated June 13, 2013) and Development Rights and Responsibilities Agreement (dated June 13, 2013).

The current APFO approval for the Westview South MXD is valid through February 12, 2019, as evidenced by the existing APFO Letter of Understanding, signed by the Frederick County Board of County Commissioners ("BOCC") on June 13, 2013 (the "2013 LOU"). The Applicant and the Planning Commission enter into this Letter as part of the Project's Phase II approvals, pursuant to Chapter 1-20, Section 1-20-20 of the Frederick County Code, and this Letter replaces the 2013 LOU.

Schools: The Project is projected to generate 100 elementary school students, 44 middle school students and 60 high school students. Based on these numbers and considering enrollment projections from pipeline development, the school adequacy test fails at the elementary level for Tuscarora ES. The Applicant has chosen the option to mitigate the inadequacy of the public elementary school capacity by paying the School Construction Fee for the elementary school

level in accordance with the criteria set forth in Section 1-20-62 of the APFO (and in accordance with the DRRA). The Applicant shall pay the School Construction Fee, based upon the fee schedule in effect at the time of residential subdivision plat recordation and payment, as set forth in Section 1-20-62(E) of the APFO, per unit type for the elementary school level.

Water and Sewer: While the public sewer and water facilities are currently adequate to serve the Project, the Applicant acknowledges that capacity is not guaranteed until purchased. APFO approval for sewer and water does not guarantee that plats will be recorded and building permits will be issued. Plat recordation and building permit issuance is subject to compliance with the Annotated Code of Maryland, Environment Article Section 9-512, et seq. and all applicable County regulations, including but not limited to Sec. 1-16-106 of the Frederick County Subdivision Regulations.

Road Improvements: All identified road improvements in the APFO Letter of Understanding signed by the Planning Commission on September 14, 2005 have been satisfied to date except for a signal installation on New Design Road and Executive Way (Phase 1, #8) and a turning movement restriction at Pegasus Ct. and MD 85 (Phase 3, # 1). Restated below, and still in force and effect under this Letter, are the replacement requirements set forth in the 2013 LOU, with updated amounts in Paragraph 1 below reflecting current costs as of the date of this Letter:

1. Install a traffic signal when warranted, justified and deemed necessary by the County. The current estimated cost of the signal is \$175,000. The Applicant shall be entitled to meet its obligations by placing with the County a letter of credit or cash payment in the amount of \$218,750 (125% of the estimated cost of the signal including the contingency). The Applicant shall be entitled to continue with the Project after acceptance of the surety, and shall install the signal at such time as approved by the County. The Applicant is responsible for conducting a traffic signal warrant analysis prior to the issuance of the last building permit, when deemed necessary by the County. Should the signal still not be warranted and justified by the time of issuance of the last building permit, then the County shall thereafter be responsible for its implementation using the surety funds provided by the Applicant, with unused surety, if any, returned in full to the Applicant upon completion of the signal work.
2. The County will establish an escrow account for the creation of a channelized island (a "pork chop") at Pegasus Court and Maryland Route 85, and the Applicant shall make a total fee-in-lieu payment of \$50,000 to said escrow account.

The payments/surety for Road Improvements stated above shall be made prior to recordation of the Project's first residential lot.

Period of Validity: The effective date of this LOU for the commencement of all APFO approvals referenced herein shall be May 21, 2014, and this LOU shall remain valid through February 12, 2019.

Disclaimer: This Letter pertains to APFO approval only, and shall not be construed to provide

any express or implied rights to continue the development process. The Project remains subject to all applicable rules and regulations, including but not limited to those related to zoning, water and sewer, and subdivision. The BOCC's jurisdiction and authority is limited by State and County law, and approvals may be required from other local or state governmental agencies before the proposed development can proceed.

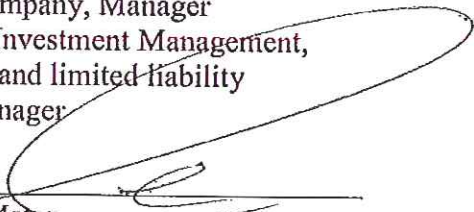
APPLICANT:

WVS PARCEL 102, LLC,

a Maryland limited liability company

By: Westview South Holdings, LLC, a Maryland limited liability company, Manager

By: Wedgewood Investment Management, LLC, a Maryland limited liability company, Manager

By: 
Mark C. Matan
Manager

Date: 5/12/14

WVS PARCEL 200, LLC,

a Maryland limited liability company

By: Westview South Holdings, LLC, a Maryland limited liability company, Manager

By: Wedgewood Investment Management, LLC, a Maryland limited liability company, Manager

By: 
Mark C. Matan
Manager

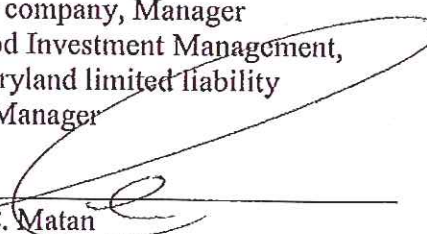
Date: 5/12/14

WVS PARCEL 204, LLC,

a Maryland limited liability company

By: Westview South Holdings, LLC, a Maryland limited liability company, Manager

By: Wedgewood Investment Management, LLC, a Maryland limited liability company, Manager

By: 
Mark C. Matan
Manager

Date: 5/12/14

WVS PARCEL 300, LLC,

a Maryland limited liability company

By: Westview South Holdings, LLC, a Maryland
limited liability company, Manager

By: Wedgewood Investment Management,
LLC, a Maryland limited liability
company, Manager

By: _____

Mark C. Matan

Manager

Date: 5/12/14

WVS PARCEL 400, LLC,

a Maryland limited liability company

By: Westview South Holdings, LLC, a Maryland
limited liability company, Manager

By: Wedgewood Investment Management,
LLC, a Maryland limited liability
company, Manager

By: _____

Mark C. Matan

Manager

Date: 5/12/14

WBP PARTNERS II, LLC,

a Maryland limited liability company

By: Wedgewood Investment Group 2008, LLC,
a Maryland limited liability company, Manager

By: Wedgewood Investment Management, LLC,
a Maryland limited liability company,
Manager

By: _____

Mark C. Matan

Manager

Date: 5/12/14

ITB2, LLC,

a Maryland limited liability company

By: Wedgewood Investment Group 2008, LLC,

a Maryland limited liability company, Manager

By: Wedgewood Investment Management, LLC,

a Maryland limited liability company,

Manager

By: _____

Mark C. Matan

Manager

Date: 5/12/14

FREDERICK COUNTY PLANNING COMMISSION:

By: _____

Dwaine E. Rull

Date: _____

5/22/14

ATTEST:

By: _____

Gary Hessong

Gary Hessong, Director, Permits & Inspections

Date: _____

6/2/14

